02-16-94 10:18	AM FROM BOWLES &	MOXON	TO ANDREW WIL	SON	F002/010		
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1	Andrew H. Wils WILSON, RYAN 235 Montgomery	S CAMPILONO	GO		*		
3	San Francisco (415) 391-390	, Californi			RECEIVED		
4	Laurie J. Bar		1 139220		FEB 1 6 1994		
5	BOWLES & MOXO 6255 Sunset B Hollywood, Ca (213) 953-336	oulevard, s Lifornia s			HUB LAW OFFICES		
7 8	Attorneys for Cross-Defenda: INTERNATIONAL			GY			
9							
10	SUPERIOR COURT OF THE STATE OF CALIFORNIA						
11	FOR THE COUNTY OF MARIN						
12	CHURCH OF SCI INTERNATIONAL	, a Califor	rnia not-)). 157 680		
1:3	for-profit re.)	OF SCIE	IN SUPPORT OF CHURCH		
14		Plaintif	ές,))	AND MOT	TIONAL'S DEMURRER TION TO STRIKE GERALD DNG'S CROSS-COMPLAINT		
	VS.		;	ARMSIRC	NG 5 CROSS-COMPLAINT		
16	GERALD ARMSTR	DNG; MICHAE	EL WALTON;)				
17		Defendant	:s.))				
18	GERALD ARMSTR	DNG,)				
19) plainant,)	TIME: 9	Tebruary 18, 1994 0:00 a.m.		
20	vs.)	DEPT: 1			
21	CHURCH OF SCI	ENTOLOGY)		RY CUT-OFF: None CUT-OPF: None		
22	INTERNATIONAL	, a Califor			DATE: None		
23	Corporation; 1 DOES 1 to 100	;)				
2.4		Cross-Def	fendant.))				
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INTRODUCTION

2 Cross-complainant Gerald Armstrong has not opposed either the 3 Church of Scientology International's ("the Church") demurrer to 4 his cross-complaint, or the Church's concurrently filed motion to 5 strike. Instead, he filed a meaningless notice, stating that he 6 intends to file an amended cross-complaint at some unidentified 7 time before the scheduled hearing on the Church's demurror and 8 motion to strike. The Church has not received any such amended :9 cross-complaint, although Armstrong has had since January 4, 1994 10 (when the demurrer and motion to strike were served) to make his 11 proposed amendments. Indeed, based on the arguments made in the 12 demurrer and moving papers, the Church does not believe that the 13 cross-complaint can be amended to state a claim for which relief 1:41 can be granted. The allegations of the cross-complaint are either 15 barred on their face by the statute of limitations, or they 16 describe absolutely privileged conduct. Accordingly, the Church 17 requests that this Court sustain the demurrer without leave to 12 amend and/or grant its motion to strike, with prejudice. The 19 cross-complaint was frivolous when filed, and no amount of 20 amendment can cure its inherent flaws.

I.

ARMSTRONG HAS NOT OPPOSED THE DEMURRER

OR THE MOTION TO STRIKE

On January 4, 1994, the Church demurred to the cross-complaint filed by defendant Gerald Armstrong ("Armstrong") and also moved to strike the cross-complaint, either in part or in its entirety. The demurrer and motion to strike were set for hearing on February 18,

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1994,¹ making Armstrong's oppositions due on February 10, 1994,
five court days before the hearing.

Armstrong filed and served nothing on February 10, 1994. Instead, on February 14, 1994, he faxed to the Church's counsel a document entitled "Notice of Intention to File First Amended Cross-Complaint" [Ex. A]. As of this writing, no "First Amended Cross-Complaint" has been received.

8 Armstrong has had 42 days in which to formulate an amended 9 cross-complaint. It is evident by his silence and delay that he 10 cannot cure the defects identified in the Church's demurrer. 11 Accordingly, the demurrer must be sustained without leave to amend.

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ARMSTRONG'S CROSS-COMPLAINT CANNOT BE AMENDED

II.

TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

151 A demurrer should be sustained without leave to amend "if it 16 appears from the complaint that under applicable substantive law 17 there is no reasonable possibility that an amendment could cure the complaint's defects." Heckendorn v. City of San Marino (1986) 42 18 19 Cal.3d 481, 486, 723 P.2d 64, 229 Cal.Rptr. 324, 327. It is 201 appropriate to sustain a demurrer without leave to amend if it is 21 apparent from the pleadings that the stated claims are barred by the statute of limitations. CAMSI IV v. Hunter Technology Corp. 221 23 (1991) 230 Cal.App.3d 1525, 1529, 282 Cal.Rptr. 80, 82; DeRose V. 24 Carswell (1988) 196 Cal.App.3d 1011, 1030-1031, 241 Cal.Rptr. 368, 25 380. Indeed, the plaintiff (or cross-complainant) bears the burden 26

The hearing was originally set with the clerk for February 11, 1994, but was changed by the Court, because of the holiday, to February 18, 1994.

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of showing that there is a reasonable possibility that the defect in a complaint (or cross-complaint) can be cured. <u>Blank v. Kirwan</u> (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 721-22.

4 Here, the Church has conclusively demonstrated that (1) all of 5 the allegations contained in the cross-complaint, with the 6 exception of two paragraphs, specifically allege discrete events 7 which are claimed to have occurred beyond the applicable statute of 8 limitations,² and (2) the remaining paragraphs allege actions which 9 are absolutely privileged under California Civil Code Section 47, 10 and cannot represent any element of a claim for abuse of process.3 11 Further, the Church has shown, by records of which this Court can 12 take judicial notice, that the two actions alleged to have occurred 13 later than the statute amounted to the filing of complaints in two 14 actions which are still pending, one in Los Angeles County Superior 15 Court, and one in this Court. Armstrong is therefore unable, as a 16 matter of law, to convert his claim to an action for malicious 17 prosecution. Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss

The applicable statute of limitations is the one-year statute of limitations pursuant to Code of Civil Procedure Section 340. <u>Thornton v. Rhoden</u> (1966) 245 Cal.App.2d 80, 95, 53 Cal.Rptr. 706, 717.

21 ³ Indeed, in <u>Oren Royal Oaks Venture v. Greenberg, Bernhard,</u> <u>Weiss & Karma, Inc.</u> (1986) 42 Cal.3d 1157, 1169, 232 Cal.Rptr. 567, 22 728 P.2d 1202, the California Supreme Court held that the precise conduct alleged by Armstrong, filing or maintaining a lawsuit, 23 cannot support a claim for abuse of process, stating:

The relevant California authorities establish 24 that while a defendant's act of improperly . . . instituting or maintaining an action may, in an appropriate case, give rise to a cause of action for 25 malicious prosecution, the mere filing or maintaining of a lawsuit -- even for an improper purpose -- is not a 26 proper basis for an abuse of process action. The 27 overwhelming majority of out-of-state precedents have reached the same conclusion.

28 42 Cal.3d at 1169 (citations omitted).

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1 & Karma, Inc. (1986) 42 Cal.3d 1157, 1169, 232 Cal.Rptr. 567, 728 2 P.2d 1202. 3 Under these circumstances, there is no "reasonable 4 possibility" that Armstrong could amend his complaint to cure the 5 defects noted.4 The Church's demurrer should be sustained without 6 leave to amend. 7 CONCLUSION 8 Armstrong has not opposed the Church's demurrer to his cross-9 complaint, nor has he opposed its motion to strike. Instead, he 10 has served a meaningless and untimely "notice of intention to 11 amend" the cross-complaint. On its face, the cross-complaint is 12 barred by the statute of limitations and Civil Code § 47, and no 131 amount of amendment by Armstrong can cure these defects. 14 Accordingly, the cross-defendant Church respectively requests that 15 this Court sustain its demurrer without leave to amend. 16 Dated: February 16, 1994 Respectfully submitted, 17 BOWLES & MOXON 18 19 By: 20 Andrew H. Wilson WILSON, RYAN & CAMPILONGO 21 Attorneys for Plaintiff and Cross-22 Defendant CHURCH OF SCIENTOLOGY 23 INTERNATIONAL 24 ARMFRAUD \REPLY .DEM 25 Nor is there any perceivable reason to destroy the resources 261 of the Court while Armstrong attempts to do so. This Court can take judicial notice that the cross-complaint herein 27 is substantially identical to the cross-complaint which Armstrong is

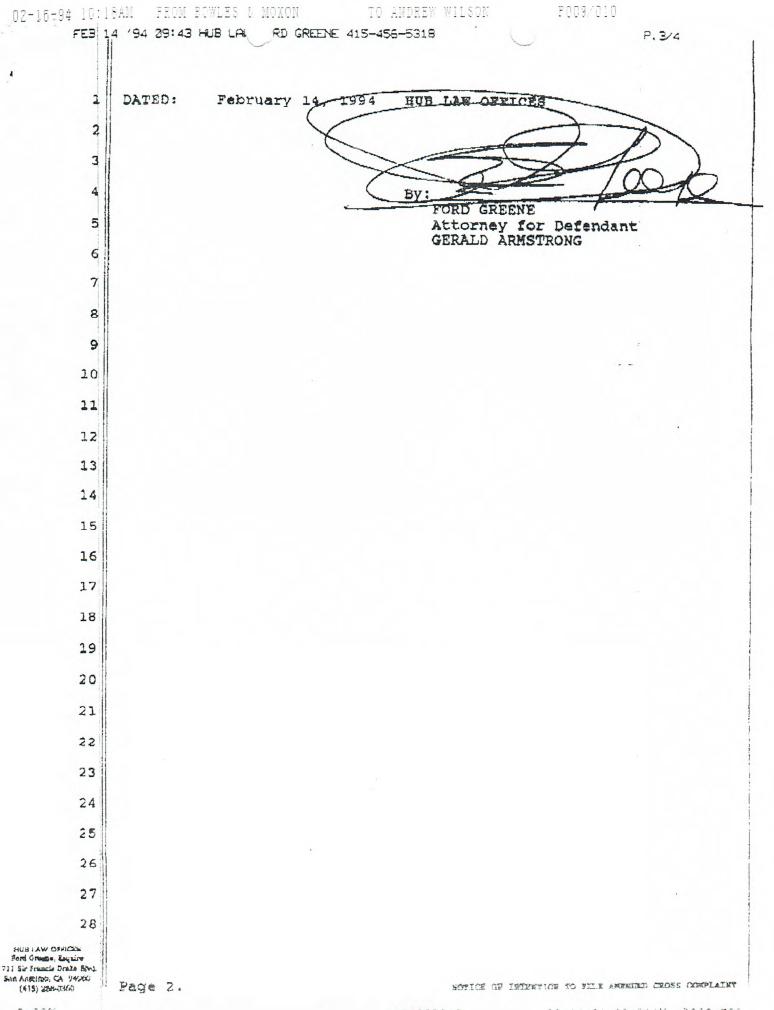
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presently litigating in Los Angeles.



02-16-94 10:10	SAM FROM BOWLES & MOXON TO ANDREW W	ILSON F008/010
FEB 1	4 '94 89:43 HUB LA JRD GREENE 415-456-5318	P.2/4
r	Ford Greene California State Bar No. 107601	
2	HUB LAW OFFICES 711 Sir Francis Drake Boulevard	
3	San Anselmo, California 94960-1949	
4	Attorney for Defendant	
5	GERALD ARMSTRONG	
6		
7		
8	SUPERIOR COURT OF THE	STATE OF CALIFORNIA
9	FOR THE COUNT	Y OF MARIN
10	·	
11	CHURCH OF SCIENTOLOGY INTERNATIONAL a California not-for-profit	.,) No. 157 680
	religious corporation,	
12	Plaintiff,) MOTICE OF INTENTION TO
13	vs.) FILE FIRST AMENDED) CROSS-COMPLAINT
14	GERALD ARMSTRONG; MICHAEL WALTON;	
15	THE GERALD ARMSTRONG CORPORATION, a California for-profit	
16	corporation; DOES 1 through 100, inclusive,	5
17	Defendants.) Date: February 18, 1994) Time: 9:00 a.m.
18) Dept: One
19		_) Trial Date:
20		:
21	TO PLAINTIFF AND ITS ATTORNEYS OF R	ECORD :
	PLEASE TARE NOTICE that it is	the intention of defendant
22	Gerald Armstrong to file a first am	ended cross-complaint pursuant
23	to Code of Civil Procedure section	472 before the hearing on
24	plaintiff's demurrer and motion to	strike set for February 18,
25	1994, in the above-entitled court.	
26	111	
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HUD LAW OTFICES		
711 Sir Francis Drake Blvd: San Anaclaio, CA 94/60	Page 1.	NOTICE OF INTESTION TO FILE AMERICAD CROSS CONFLATET
(415) 458-0860	TOAC T.	where we the the the transmit and a true committees reactions where the

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FEB 14 '94 09:44 HUB LA JRD GREENE 415-456-5318

P010/010

P.4/4

PROOF OF SERVICE

2	I am employed in the County of Marin, State of California. I				
3	am over the age of eighteen years and am not a party to the above				
4	entitled action. My business address is 711 Sir Francis Drake				
5	Boulevard, San Anselmo, California. I served the following				
5	documents: NOTICE OF INTENTION TO FILE FIRST AMENDED CROSS COMPLAINT				
6	on the following person(s) on the date set forth below, by placing				
9	a true copy thereof enclosed in a sealed envelope with postage				
10	thereon fully prepaid to be placed in the United States Mail at				
11	San Anselmo, California:				
12	Andrew Wilson, Esquire WILSON, RYAN & CAMPILONGO				
13	235 Montgomery Street, Suite 450 San Francisco, California 94104				
14	Laurie J. Bartilson, Esq. BY TELECOPIER BOWLES & MOXON				
15	6255 Sunset Boulevard, Suite 2000 Los Angeles, California 90028				
16	MICHAEL WALTON				
17	707 Fawn Drive San Anselmo, CA 94960				
18					
19	[X] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.				
20	[] (Personal) I caused said papers to be personally service				
21	on the office of opposing counsel.				
22	[X] (State) I declare under penalty of perjury under the laws of the State of California that the above				
23	is true and correct.				
24	DATED: February 1, 1994				
25					
26	Care fully				
27					
28					
HUB LAW OFFICES Ford Greener, Baquire 711, Sir Francis Druke Blvd. Sne Aneelroo, CA 94960 (415) 258-0350	Page 3. Buttom of interitor to file AMERICA CROSS COMPLAINT				

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1	PROOF OF SERVICE						
2	I declare that I am employed in the City and County of San						
3	Francisco, California.						
4	I am over the age of eighteen years and not a party to the						
5	within entitled action. My business address is 235 Montgomery						
6	Street, Suite 450, San Francisco, California.						
7	On February 16, 1994, I caused the attached copy of						
8	PLAINTIFF'S REPLY IN SUPPORT OF CHURCH OF SCIENTOLOGY						
9	INTERNATIONAL'S DEMURRER AND MOTION TO STRIKE GERALD ARMSTRONG'S						
10	CROSS-COMPLAINT to be hand served via Lightening Messenger Service						
11	to the following at the addresses listed below:						
12	Ford Greene, Esq.						
13	HUB LAW OFFICES 711 Sir Francis Drake Blvd.						
14	San Anselmo, California						
15	Michael Walton 707 Fawn Dr.						
16	San Anselmo, CA 94960						
17	I declare under the penalty of perjury under the laws of						
18	the State of California that the foregoing is true and correct.						
19	Executed at San Francisco, California/on February 16, 1994.						
20	1/1/1/1						
21	Débra W. Craig						
22							
23							
24							
25							
26							
27							
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WILSON, RYAN & CAMPILONGO 235 Montgomery Street, Suite 450 San Francisco, California 94104